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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re A.M., et al., Persons Coming Under
the Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

M.C.,

Defendant and Appellant.

E071746

(Super.Ct.No. SWJ1600194)

OPINION

APPEAL from the Superior Court of Riverside County. Judith C. Clark, Judge.

Affirmed.

Michelle L. Jarvis, under appointment by the Court of Appeal, for Defendant and Appellant.

Gregory P. Priamos, County Counsel, James E. Brown, Guy B. Pittman, and Julie Koons Jarvi, Deputy County Counsel, for Plaintiff and Respondent.

I

INTRODUCTION

M.C. (Mother) and E.M. (Father)¹ have a history of domestic violence and neglecting their children. Mother also had substance abuse and mental health issues. As a result, the Riverside County Department of Public Social Services (DPSS) removed their two daughters, Au.M. and Ar.M. (collectively, the children), from their custody and the parents were offered reunification services. After Mother received over 18 months of services, including family maintenance services, Mother's services and parental rights were terminated. Prior to the termination of parental rights, Mother filed Welfare and Institutions Code² section 388 petitions³ on behalf of each child, which were summarily denied. Mother appeals from the juvenile court's order denying her section 388 petitions.

On appeal, Mother argues the juvenile court erred in summarily denying her section 388 petitions without an evidentiary hearing. We find no error and affirm the order denying Mother's section 388 petitions without a hearing. Mother failed to make a prima facie showing that the children's best interest would be served by providing Mother with additional reunification services.

¹ Father is not a party to this appeal.

² All future statutory references are to the Welfare and Institutions Code unless otherwise stated.

³ Mother filed two separate petitions as to Au.M. and Ar.M.

II

FACTUAL AND PROCEDURAL BACKGROUND

On March 16, 2016, DPSS received a referral alleging general neglect of then five-year-old Au.M. due to the parents' history of domestic violence. On March 24, 2016, a social worker made an unannounced home visit and spoke with Mother. Mother reported that Father had moved out of the home on January 10, 2016, following a domestic dispute wherein they were both drinking, arguing, and shoving each other. In addition, Mother struck Father in the head with a chair, leaving a gash on his head. Au.M. was present and witnessed the incident. Law enforcement was called, and Mother was arrested and taken to jail. According to Mother, her relationship with Father had "never been peaceful."

Mother also reported that she used to smoke marijuana because she had lupus, and the marijuana helped with her pain. She explained that the last time she smoked was over a month ago and that she had a medical marijuana card but she let it expire. She submitted to an oral drug screen which had negative results. Mother had previously been convicted of driving under the influence in April 2015, and was placed on summary probation from June 5, 2015 to June 4, 2018. She was also convicted of inflicting corporal injury on a spouse, and was granted probation on April 7, 2016, which would expire on April 6, 2020.

The social worker spoke privately with Au.M. who disclosed that Father had inappropriately touched her private area on several occasions. Mother reported that

Au.M. had disclosed in November 2015 that Father had touched her private area and questioned Father about his actions. Father denied the accusations. Since that time Mother did not allow Father to sleep in the same bed as her and Au.M. or have any unsupervised contact with Au.M. Nonetheless, Mother did not call the police about Father's actions because she had "other things happening in her life at that time." In addition, Mother still allowed Father to live in the home.

Au.M. was taken into protective custody. On March 25, 2016, a petition was filed on behalf of Au.M. pursuant to section 300, subdivisions (b) (failure to protect) and (d) (sexual abuse). A first amended petition was filed on March 29, 2016, adding allegations concerning Mother's criminal history and Father's abuse of alcohol.

On March 30, 2016, the juvenile court formally detained Au.M. from parental custody and provided the parents with supervised visitation.

On April 12, 2016, Au.M. told the social worker that she had lied about her father touching her private parts and that Father had not touched her private area. In addition, during a sexual abuse examination the following day, Au.M. did not disclose that her father had touched her in her private area.

On May 12, 2016, a detective informed the social worker that Father came in for an interview concerning the sexual abuse allegations. Father denied the allegations and told the detective that he had not slept in the bedroom with his wife and daughter in years. He also stated that he traveled for his job and worked out of state for long periods.

The detective informed the social worker that he would not be pursuing the investigation any further.

The social worker recommended that the sexual abuse allegations be stricken and that the failure to protect allegations be found true. The social worker also recommended that the parents be offered reunification services.

The jurisdictional/dispositional hearing was held on May 24, 2016. At that time, DPSS filed a second amended information. The juvenile court found true the failure to protect allegations in the second amended information and struck the sexual abuse allegations. Au.M. was declared a dependent of the court and the parents were provided with reunification services and supervised visits. Mother's case plan required her to participate and complete a domestic violence program, general/individual counseling, a parenting program, an outpatient substance abuse program, and random drug testing.

In October 2016, Mother gave birth to a second daughter, Ar.M. Father was Ar.M.'s father and resided with Mother and Ar.M. Father moved back into the home in July 2016 to support Mother financially and emotionally. Mother was compliant with her case plan. She had completed two months of a three-month driving under the influence course and remained on summary probation. She had also completed an outpatient substance abuse treatment program, a parenting education program, and a domestic violence program. In addition, during this review period, there were no incidents of domestic violence between Mother and Father. Mother continued to participate in random drug testing, but her submissions had been infrequent. She also needed to

complete individual counseling. Moreover, Mother's visits with Au.M. were described as "very positive." Mother was nurturing when interacting with Au.M., and she and Au.M. appeared to enjoy each other's company. The social worker recommended additional reunification services for the parents, liberalized visitations with Au.M., and possible placement of Au.M. on family maintenance services.

Au.M. had been placed in three different foster homes during the first review period. At the first home, she had exhibited aggressive behaviors toward other foster children in the home. In the second home, Au.M. did well, but she had difficulties interacting with the foster caregiver's biological child. Au.M. adjusted better in her third foster home. She no longer had temper tantrums and had shown improvement with cooperating with other children.

Mother began unsupervised visits with Au.M. in December 2016. According to Mother, the first unsupervised visit was difficult because Au.M. did not understand why she could not stay with Mother. This prompted Mother to cancel unsupervised visits. However, following a team decision meeting, Mother expressed her desire to develop the parenting skills needed to parent a strong-willed child and agreed to participate in unsupervised visits. Mother's subsequent unsupervised visits went well, and Au.M. appeared to adjust to returning to her caregiver after each visit.

On December 5, 2016, the social worker conducted an announced home visit with Mother. Mother reported that she rented out three bedrooms in her home, for a total of \$1,600 a month, which allowed her to be financially independent. Mother's home

appeared clean and tidy. She shared a room with Father and Ar.M. and had an additional bed for Au.M.

The six-month review hearing was held on January 18, 2017. The juvenile court ordered additional reunification services for the parents. The court also authorized placement of Au.M. with Mother on the condition that Father was not residing in the home.

By May 2017, Mother had successfully completed all of the educational components of her case plan and had demonstrated the ability to benefit from her services. The social worker noted that Mother had made efforts to address her prior issues, which included substance abuse and behavior management, and that she was a positive example for her children. The social worker believed that Mother was willing to change her life and circumstances for the betterment of her children. Mother had overnight visits with Au.M., but she sometimes had the children stay with the paternal grandparents during her weekend visits. It was anticipated that Au.M. would be returned to Mother's care by the 12-month review hearing. Father, meanwhile, had moved around from state to state for work and had not completed his case plan.

Au.M. excelled both academically and behaviorally. She had no episodes of unmanageable behavior in her current foster home and was described as a sweet little girl who needed consistency and guidance. Mother had remained actively involved with Au.M., and Au.M. was happy and excited to be with her mother. Mother had maintained

a healthy and positive relationship with Au.M. On May 12, 2017, Au.M. was placed with Mother.

The 12-month review hearing was held on June 27, 2017. The juvenile court ordered family maintenance services for Mother and terminated reunification services for Father.

On June 27, 2017, Mother asked the paternal grandparents to watch the children while she served time in a correctional facility for her prior assault charge against Father. She also wanted the children to live with the paternal grandparents so she would have some time to find work and a place to live. Au.M. and Ar.M. thereafter began to reside with the paternal grandparents.

The paternal grandmother confirmed that Mother had asked her to watch the children and noted her concerns about unknown people at Mother's home. A general neglect referral was made to DPSS in regards to heavy "unknown foot traffic" occurring in Mother's home. During the investigation of this referral, Mother was not visiting the children, not assisting the paternal grandmother with any of the children's needs, and not completing any of the additional services on her case plan. In addition, Mother refused to submit to two drug tests, thus it was unknown whether she was using any illegal substances. DPSS closed the general neglect allegation as inconclusive but substantiated the allegation of caretaker absence/incapacity. At the time the referral was closed, Mother was no longer incarcerated but was not providing direct care to her children.

On July 5, 2017, the social worker met with Mother at the correctional facility and discussed all of the people living in Mother's home. The social worker advised Mother not to bring the children back to her home until "all of the foot traffic [was] cleared out of [her] home." Mother claimed that the people would be leaving by the end of the month and planned to give up the home and move closer to the paternal grandmother.

Throughout the month of August 2017, Mother distanced herself from the social worker by changing her cell phone number and not responding to any home visits, correspondence, or other forms of communication. Moreover, she was also not calling or visiting the children, and when she did call, Mother was verbally aggressive with the paternal grandmother. She also told the paternal grandmother not to allow Father to see the children "because he was gay and [was] a part of a gay and lesbian pornography ring." Mother stopped attending individual counseling with her therapist. A team decision meeting was held on August 3, 2017, to discuss issues such as Mother's lack of communication, poor decisionmaking skills, her refusal to drug test, and her mental health. Mother expressed concerns about feeling hopeless and afraid about the future.

The social worker contacted Mother in September 2017 and provided her with shelter resources that would allow her to have the children in her care as Mother had been evicted from her home. However, Mother stated that she was not interested in taking her children to a shelter. She claimed to be working for an elderly man as a care provider and resided with the elderly man. Mother was not accepting assistance that was provided

to her. She also was not visiting Au.M., and only spoke with her on the phone from time to time.

On October 12, 2017, Father called the social worker asking for advice because Mother was calling and threatening him. Mother told Father that if he did not give her money then she would make him lose his job. She called Father's place of employment pretending to be the social worker. She also called and hung up on him at all hours of the night. Father was afraid because he did not have additional resources as all of his money went to the paternal grandmother to care for the children.

On October 16, 2017, the paternal grandmother informed the social worker that on October 12, 2017, the police were called due to Mother becoming erratic and physically attacking Father and the paternal grandfather. Mother ran back and forth on the neighbor's lawn screaming for someone to call 911. She also caused damage to Father's vehicle. It appeared that domestic violence was still an issue that had not subsided even though Mother had completed a domestic violence program. Furthermore, Mother tested positive for marijuana in October 2017. She also was not keeping her scheduled appointments with her in-home parenting assistance nurse and was unable to complete those services.

On October 19, 2017, a general neglect referral was received. Following an investigation, on October 24, 2017, a section 387 petition was filed on behalf of Au.M., and a section 300 petition on behalf of Ar.M.

On October 25, 2017, the juvenile court found a prima facie showing had been made that Au.M. came within section 387 and that Ar.M. came within section 300. The court formally detained the children and placed them with their paternal grandmother. The parents were provided with supervised visits.

In December 2017, the social worker reported that the children had no contact with Mother for about three months and that Mother had sabotaged the bond between her and Au.M. Mother was not assisting in the care and needs of the children and failed to address her own needs. She also had a recent positive drug test for marijuana. Mother appeared to be unaware of the severity of her situation, and they were concerned for her lack of stability. The paternal grandmother reported that Mother had called her at 1:00 a.m. and 5:30 a.m., and that if she did not respond immediately to Mother's calls or text messages, Mother was rude to her. In addition, on November 28, 2017, the social worker received four text messages from Mother regarding her concern about the children's frequency in seeing Father. Mother also discussed Father's girlfriend, his sexual preferences, and his "frequent adult beverages." The paternal grandmother told Mother to just focus on herself and the children, but Mother did not follow the advice, and appeared to be very focused and concerned about Father. Mother came to Father's place of employment and caused a scene, which resulted in Father obtaining a permanent, five-year restraining order against her. Mother also called Father's emergency engineering work phone line several dozen times resulting in his employer's human

resources department warning Father and discussing his future employment with the company.

In January 2018, Mother informed the social worker that the paternal grandmother was allowing Father contact with the children and that there were people living in the paternal grandmother's home that DPSS was not aware of. This prompted DPSS to investigate the paternal grandmother's home. Following an investigation, the paternal grandmother was given notice of a change in placement. The home had not been certified for placement, and the paternal grandmother had not been forthcoming with DPSS as to who resided in the home. On January 25, 2018, the children were placed in relative care with a maternal aunt.

The hearing on the section 387 petition was held on January 25, 2018. The juvenile court found true the allegations in the petition and removed physical custody of Au.M. from Mother's care. The court denied Mother further reunification services and set a section 366.26 hearing to terminate parental rights. On that same day, the court held the jurisdictional/dispositional hearing on the section 300 petition as to Ar.M. The court found true the allegations in the section 300 petition and removed physical custody of Ar.M. from the parents' care. The court also declared Ar.M. a dependent of the court, denied services to the parents pursuant to section 361.5, subdivision (b)(10), and set a section 366.26 hearing.

On February 1, 2018, Father filed a notice of intent to file a writ petition. The petition was subsequently dismissed.

Mother had monthly visits with the children. The visits appeared to go well. Mother was interactive with the children and engaged in play and conversations with them. She brought toys, clothing, and snacks for the children. She also spoke with Au.M. about her school, her feelings, and anything that was new and exciting with her life and with Ar.M. Au.M. remained bonded to her parents, and she would get excited when she knew she was going for a visit. However, her relative caregiver (the maternal aunt) reported that it usually took Au.M. a couple of days to revert to appropriate, acceptable behavior after visits.

On August 20, 2018, Mother filed section 388 petitions with supporting exhibits, requesting reunification services. She claimed that she had successfully completed parenting classes, participated in Narcotics Anonymous/Alcoholics Anonymous (NA/AA) meetings, had stable employment, and could provide for her children. In support, she attached a certificate dated June 5, 2018, for being an active participant in a parenting program, her NA/AA meeting card showing that she had attended two meetings in April and two in May, and pay stubs showing several months of employment. Mother believed that it would be in the children's best interest to provide her with services, because she had shown growth and motivation in her progress, consistently visited the children, and loved her children very much. In support, she attached her own summary of the visits she had with her children between February 2018 through July 2018, describing the visits as positive. She asserted that she had attended every visit and had consistently brought food and toys for the children. She also stated that she had

appropriately interacted with the children, they had shown affection to each other, Au.M. repeatedly informed her that she missed her and loved her.

On August 22, 2018, the juvenile court summarily denied the petitions, finding Mother had not made a prima facie showing that her circumstances had changed regarding substance abuse and mental health issues.

On September 13, 2018, Father filed section 388 petitions requesting reunification services for both children. The court set the matter for an evidentiary hearing.

Meanwhile, the children continued to adjust in their maternal aunt's home. The maternal aunt showed the children "love, direction, and permanency." The maternal aunt desired to adopt the children and had demonstrated her willingness to provide a permanent and loving home for the children. The children appeared to be "very bonded" to the maternal aunt, as well as, to the maternal grandparents who also lived in the home. Ar.M. looked to the maternal aunt for comfort and to have her needs met. Both children were also observed to be very comfortable in the home and around the maternal aunt and the maternal grandparents. In addition, both children had adjusted well to their day-to-day schedule. Au.M. was in therapy to address concerns of verbal aggression and separation anxiety. She did well in therapy and was discharged from therapy in August 2018. Au.M. expressed that she felt happy and excited to be adopted. When asked why she felt this way, Au.M. stated that once she was adopted, she and her sister would always be able to live with her maternal aunt and would not have to leave again.

On October 22, 2018, Mother filed another set of section 388 petitions with supporting exhibits, again seeking family reunification services. She attached the same documents as she had done in her first set of section 388 petitions, but added a certificate of completion of a 16-hour drug and alcohol awareness class and additional notes on visits. Mother provided a summary of the September and October 2018 visits which were positive, affectionate, and interactive.

On October 23, 2018, the juvenile court held a hearing to address whether Mother had made a prima facie showing on her section 388 petitions. On that same day, the court also held a hearing on Father's section 388 petitions, as well as, the section 366.26 hearing. At that time, Mother filed additional pay stubs showing current employment from July to September 2018. She also filed a "Counseling Verification" showing that she was provided four counseling sessions from September 24, 2018 through October 22, 2018. The verification also indicated that therapy was ongoing. Minors' counsel and counsel for DPSS asked the court to deny Mother a hearing on the section 388 petitions. Following further argument, the court denied Mother a hearing, finding she had not made a prima facie showing for an evidentiary hearing.

Thereafter, the court heard stipulated testimony as to Father's section 388 petitions. Au.M. stated that she wanted to be adopted by her maternal aunt. The court accepted the stipulated testimony and proceeded to the section 366.26 hearing. Mother's counsel did not offer any evidence on the section 366.26 hearing but argued that the

beneficial parent-child relationship exception to adoption should apply. The court took Father's section 388 petitions, as well as the section 366.26 issues under submission.

On November 8, 2018, the juvenile court denied Father's section 388 petitions, finding Father had failed to show it was in the children's best interest to grant his petitions. In addition, the court found the children adoptable and terminated parental rights.

On November 27, 2018, Mother timely filed a notice of appeal.

III

DISCUSSION

Mother argues the juvenile court abused its discretion when it summarily denied her section 388 petitions because her petitions with supporting attachments showed a prima facie case for changed circumstances and best interest of the children.

Under section 388, a juvenile court order may be changed or set aside "if the petitioner establishes by a preponderance of the evidence that (1) new evidence or changed circumstances exist and (2) the proposed change would promote the best interests of the child." (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 806.) "[I]f the liberally construed allegations of the petition do not make a prima facie showing of changed circumstances and that the proposed change would promote the best interests of the child, the court need not order a hearing on the petition." (*Ibid.*; § 388, subd. (d) ["If it appears that the best interests of the child . . . may be promoted by the proposed change of order, . . . the court shall order that a hearing be held . . ."].) If, for instance, the

parent makes a prima facie showing of changed circumstances, the juvenile court can still deny the petition without an evidentiary hearing if the parent fails to make a prima facie showing the relief sought would promote the child's best interest. (*In re Justice P.* (2004) 123 Cal.App.4th 181, 188-190 (*Justice P.*); see *In re Elizabeth M.* (1997) 52 Cal.App.4th 318, 322-323.)

“A “prima facie” showing refers to those facts which will sustain a favorable decision if the evidence submitted in support of the allegations by the petitioner is credited.” (*In re Josiah S.* (2002) 102 Cal.App.4th 403, 418.) Consequently, section 388 petitions with general, conclusory allegations do not suffice. Otherwise, the decision to grant a hearing on a section 388 petition would be nothing more than a pointless formality. (*In re Edward H.* (1996) 43 Cal.App.4th 584, 593.) In determining whether the petition makes the necessary showing, the court may consider the entire factual and procedural history of the case. (*In re Jackson W.* (2010) 184 Cal.App.4th 247, 258.)

We review the juvenile court's order denying a hearing for abuse of discretion. (*In re Anthony W.* (2001) 87 Cal.App.4th 246, 250.) ““When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.”” (*In re Brittany K.* (2005) 127 Cal.App.4th 1497, 1505.) The juvenile court's decision will not be disturbed unless the court ““has exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination [citations].” [Citations.]” (*In re Stephanie M.* (1994) 7

Cal.4th 295, 318 (*Stephanie M.*.) “It is rare that the denial of a section 388 motion merits reversal as an abuse of discretion” (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 522.)

Mother contends the juvenile court should have held a hearing on her section 388 petitions because she established a prima facie showing of changed circumstances and that the proposed change would promote the best interest of the children. We need not decide whether the juvenile court erred in finding there was no prima facie showing of changed circumstances because Mother failed to make a prima facie showing that granting the section 388 petitions and providing additional reunification services was in the best interest of the children.

Parent and child share a fundamental interest in reuniting up to the point at which reunification efforts cease. (*In re R.H.* (2009) 170 Cal.App.4th 678, 697, disapproved on another ground in *John v. Superior Court* (2016) 63 Cal.4th 91, 98-100.) By the point of a section 366.26 hearing to select and implement a child’s permanent plan, however, the interests of the parent and the child have diverged. (*Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 254.) Therefore, after reunification efforts have terminated or bypassed, the court’s focus shifts from family reunification toward promoting the child’s needs for permanency and stability. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309 (*Marilyn H.*.) This is a difficult burden to meet when reunification services have been bypassed or terminated. This is because, “[a]fter the termination of reunification services [or bypass of services], a parent’s interest in the care, custody and companionship of the child is no

longer paramount. [Citation.]” (*In re Angel B.* (2002) 97 Cal.App.4th 454, 464 (*Angel B.*)). In fact, there is a rebuttable presumption continued foster care is in the child’s best interest. (*Ibid.*) Such presumption applies with even greater strength when adoption is the permanent plan. (*Ibid.*) “A court hearing a motion for change of placement at this stage of the proceedings must recognize this shift of focus in determining the ultimate question before it, that is, the best interests of the child.” (*Stephanie M.*, *supra*, 7 Cal.4th at p. 317.)

Mother ignores this shift in focus. In her petitions, she alleged that she had shown “growth and motivation” towards reunification, she consistently visited the children, she loves the children, and believes that it is in their best interest for the court to order services to her. In her opening brief, her argument that the petitions made the requisite showing is premised primarily on the fact that she had consistently visited the children after February 2018 and that she had loving and positive visits. However, in light of the court’s focus on permanence and stability and not reunification, her allegation in the petitions that it is in the children’s best interest to offer her additional reunification services is conclusory. It does not make a *prima facie* case because it does not include any facts which would support a finding that the children would be better off with her than continuing in their current placement. In other words, she did not attempt to rebut the presumption that continued out-of-home placement was in the best interest of the children. (See *Marilyn H.*, *supra*, 5 Cal.4th at p. 310.) Neither in the juvenile court nor on appeal has mother addressed the children’s need for permanency and stability and how

those interests would be advanced by offering her additional services. “The presumption favoring natural parents by itself does not satisfy the best interests prong of section 388.” (*Justice P.*, *supra*, 123 Cal.App.4th at p. 192.)

At the time Mother filed her second section 388 petitions, shortly before the section 366.26 hearing, the children’s interest in stability was the juvenile court’s foremost concern, outweighing any interest in reunification. The prospect of allowing Mother additional reunification services to see if Mother would and could do what she was required to do to regain custody would not have promoted stability for the children, and thus would not have promoted the children’s best interest. (*Angel B.*, *supra*, 97 Cal.App.4th at p. 464.) Au.M. was removed from parental custody when she was five years old in March 2016. She was returned to Mother’s care in May 2017 on family maintenance services. Thereafter, Au.M. and her one-year-old sister, Ar.M., were removed from Mother’s care in October 2017. Mother was denied further services on January 25, 2018, and she filed her second set of section 388 petitions on October 22, 2018. Au.M. is now almost nine years old, and Ar.M. is nearly three years old. They were placed in their prospective adoptive home with their maternal aunt on January 25, 2018, and have been in that home for over a year. Granting reunification services to Mother would only prolong the children’s adoption into a stable and loving home. The social worker noted that the children and the maternal aunt are mutually bonded, and that the maternal aunt was meeting the children’s needs. In fact, due to the stability and love provided by the maternal aunt and the maternal grandparents, Au.M. no longer required

therapy to address her aggression issues. Moreover, Au.M. specifically reported that she wanted to be adopted by the maternal aunt.

On the other hand, Mother had been offered over 18 months of services and had failed to benefit from the services provided. Although she had shown she could complete services and be a loving mother to her children, she had also demonstrated instability by continuing to engage in the same behaviors that brought her to the attention of the juvenile court. She also failed to address her mental health issues and had only recently begun to make efforts to address her anger management, substance abuse, and domestic violence issues. The juvenile court reasonably concluded that, under such circumstances and in light of Mother's history with DPSS, Mother had not made a prima facie showing of changed circumstances or that reinstating reunification services would have promoted stability for the children and be in their best interest. (*Angel B.*, *supra*, 97 Cal.App.4th at p. 464.)

In *Angel B.*, *supra*, 97 Cal.App.4th 454, the court rejected the mother's contention the juvenile court erred in denying her section 388 petition without holding a hearing. The mother in *Angel B.* had a long history of drug abuse, unsuccessful rehabilitation attempts, and failure to reunify with another child. After the mother was denied reunification services, she began to improve, enrolling in a treatment program, testing clean for four months, completing various classes, and obtaining employment. Regular visits with her child also went well. (*Id.* at p. 459.) Nevertheless, when she filed her section 388 petition for reunification services, the court summarily denied her petition

without a hearing. The Court of Appeal affirmed, finding no abuse of discretion in the juvenile court refusing to hold a hearing. (*Id.* at p. 462.)

The appellate court in *Angel B.* acknowledged the petition showed the mother was doing well, “in the sense that she has remained sober, completed various classes, obtained employment, and visited regularly with [the child].” (*Angel B.*, *supra*, 97 Cal.App.4th at pp. 464-465.) The court also assumed for purposes of the appeal “that this time her resolve is different, and that she will, in fact, be able to remain sober, remain employed, become self-supporting and obtain housing.” (*Id.* at p. 465, italics omitted.) Nevertheless, the court concluded “such facts are not legally sufficient to require a hearing on her section 388 petition.” (*Ibid.*) The court explained: “[T]here is a rebuttable presumption that, in the absence of continuing reunification services, stability in an existing placement is in the best interest of the child, particularly when such placement is leading to adoption by the long-term caretakers. [Citation.] To rebut that presumption, a parent must make some factual showing that the best interests of the child would be served by modification.” (*Ibid.*) The mother in *Angel B.* did not make such a showing. Nor does Mother here.

Mother relies on *In re Hashem H.* (1996) 45 Cal.App.4th 1791 (*Hashem H.*) to support her position. However, that case is inapt here. In *Hashem H.*, the Court of Appeal held the mother had made a prima facie showing sufficient to satisfy section 388 as she had shown both changed circumstances and best interest of the child. The facts there were different from the present case. In addition to other facts, the mother did so

well in conjoint therapy with her son that her therapist recommended the child be returned to her. The court held the section 388 petition showed the mother’s problems leading to removal “had been successfully resolved through therapy.” (*Id.* at p. 1799.) That is not the case here. Unlike in *Hashem H.*, Mother was not participating in conjoint counseling with the children, and she was not successful in therapy during the 18 months of services she received. Instead, Mother had only attended four therapy sessions, a 16-hour substance abuse awareness program, and four NA/AA meetings at the time she filed her section 388 petitions.

We conclude Mother had not made a prima facie showing that the children’s best interest would be served by offering Mother additional reunification services. The juvenile court therefore did not abuse its discretion in summarily denying Mother’s section 388 petitions without a hearing.

IV

DISPOSITION

The juvenile court’s order summarily denying Mother’s section 388 petitions is affirmed.

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CODRINGTON
J.

We concur:

RAMIREZ
P. J.

FIELDS
J.